

ORDINANCE NO. O-2019-014

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS AMENDING CHAPTER 58 "OFFENSES AND MISCELLANEOUS PROVISIONS" OF THE CODE OF ORDINANCES OF THE CITY OF MAGNOLIA, TEXAS BY ADDING A NEW ARTICLE VI "CHILD SAFETY ZONE"; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the City Council of the City of Magnolia, Texas has studied the present provisions of Chapter 58 "Offenses and Miscellaneous Provisions" of the Code of Ordinances of the City of Magnolia; and

WHEREAS, the City Council is continually reviewing the provisions of the Code of Ordinances relating to the elimination of hazards and other circumstances which generally impact the health, safety and well-being of residents, citizens and inhabitants and its Children;

WHEREAS, the Texas Department of Criminal Justice Parole Division, pursuant to Texas Government Code has established child safety zones for individuals convicted of sexual offenses;

WHEREAS, the City Council finds it necessary to adopt the following amendments to Chapter 58 of the Code of Ordinances; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted as findings of fact and conclusions of law by the City Council and made a part hereof for all purposes.

Section 2. Amendments. Chapter 58 entitled "Offenses and Miscellaneous Provisions" of the City of Magnolia Code of Ordinances is hereby amended by adding a new Article VI "Child Safety Zone" that is attached hereto as Exhibit "A" and incorporated herein for all purposes.

Section 3. Repealing Clause. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall be

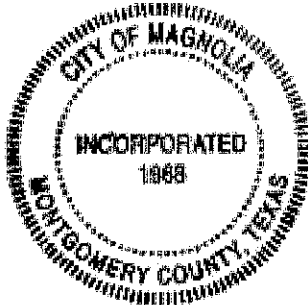
only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 4. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

Section 5. Compliance Clause and Effective Date. The City Council finds, determines and declares that a sufficient written notice was posted and this Ordinance was passed in accordance with the Open Meetings Act. The City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a) of the Local Government Code, at which time this Ordinance takes effect.

PASSED, APPROVED and ADOPTED by the City Council of the City of Magnolia, Montgomery County, Texas on this the 9th day of July 2019.

CITY OF MAGNOLIA, TEXAS



Todd Kana
Todd Kana, Mayor

ATTEST:

Lynne George
Lynne George, CPM, TRMC
City Secretary

EXHIBIT "A"

CHAPTER 58

OFFENSES AND MISCELLANEOUS OFFENSES

NEW ARTICLE ADDED

ARTICLE VI. CHILD SAFETY ZONE

Sec. 58-191. – Authority.

These regulations are promulgated pursuant to and in conformity with V.T.C.A. Local Government Code Chapter 391, as amended.

Sec. 58-192. – Definitions

Definitions. For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

Child safety zone means premises where children commonly gather. The term includes a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children. The term does not include a church, as defined by Section [544.251](#), Insurance Code. (Texas Local Government Code 341.906 as amended)

"Playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section [481.134](#), Health and Safety Code.

Permanent Residence shall mean a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

Registered sex offender means an individual who is required to register as a sex offender under Chapter [62](#), Code of Criminal Procedure.

Sec. 58-193. – Offenses

(a) It shall be unlawful for a registered sex offender to establish a residence or to go in, on, or within one thousand (1,000) feet of a child safety zone as those terms are defined in Local Government Code § 341.906; V.T.C.A., Health and Safety Code § 481.134 and Texas Code of Criminal Procedure ch. 62.

(b) It shall be unlawful for a registered sex offender on each October 30th or 31st (or any other date set by the City for trick-or-treaters) between the hours 4:00 p.m. and 11:00 p.m. to

leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the registered sex offender's permanent residence.

Sec. 58-194. - Evidentiary matters; measurements.

(a) The distance of one thousand (1,000) feet from a child safety zone shall be measured on a straight line from the closest boundary line of the child safety zone to the location of the registered sex offender or the closest boundary line of a registered sex offender's permanent residence.

(b) In cases of a dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove otherwise.

Sec. 58-195. - Culpable mental state not required.

Neither allegation nor evidence of a culpable mental state is required for the proof of any offense defined by this article.

Sec. 58-196. - Affirmative defenses; exceptions; exemptions

(a) It is an affirmative defense to prosecution of an offense under this Article that the registered sex offender was in, on or within one thousand (1,000) feet of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

(b) The regulations contained in this Article do not apply to a registered sex offender who established a permanent residence located within one thousand (1,000) feet of a child safety zone prior to the adoption of this Article. The exception established by this subsection applies only to:

(1) Areas necessary for the registered sex offender to have access to and live in the permanent residence; and

(2) The period of time that the registered sex offender maintains residency in the permanent residence.

(c) Any registered sex offender may apply for an exemption from one (1) or more of the provisions of this Article by making application to the office of the City Administrator by submitting in writing to the City Secretary the application stating clearly the reasons why the registered sex offender is seeking the exemption. A decision on an exemption application will be issued within 10 business days of receipt of a completed application.

Sec. 58-197. - Enforcement procedures.

If a police officer reasonably believes that a child sex offender is in a city park in violation of the ordinance, the officer shall require the child sex offender to provide his/her name, address, and telephone number. If it is established that the individual is a child sex offender, then a violation of the ordinance has occurred and is a Class C misdemeanor as defined in the Penal Code.

Sec. 58-198. - Penalty.

Any person violating any provision of this article, upon conviction, is punishable by a fine not to exceed five hundred dollars (\$500.00).

Sec. 58-199. - Injunctive relief.

Any violation of this article may be enjoined by a suit filed in the name of the city in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this article or in this Code.

Sec. 58-200. - Severability.

If any provision of this article is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall remain in full force and effect. If any provision of this article is in conflict with state law, state law will prevail.

Secs. 58-201—58-210. - Reserved